

DHMH POLICY

<http://www.dhmh.state.md.us/policies/inpolm.htm>

OPERATIONS-OFFICE OF CONTRACT POLICY, MANAGEMENT & PROCUREMENT- DHMH POLICY 02.12.01

Effective Date: September 30, 2004

DHMH Procurement Policy

I. EXECUTIVE SUMMARY

Maryland procurement law vests overall power and authority over procurement matters with the Board of Public Works (BPW). The BPW has promulgated regulations that provide for delegation of authority to certain Primary Procurement Agencies and allows them to further delegate authority to procuring units. These regulations also define procurement methods and procedures, provide specific clauses and provisions for solicitations and procurement contracts, outline remedies and socioeconomic policies, and stipulate requirements for advertising and reporting procurement activity. The BPW also issues Advisories that have the effect of State policy.

This policy implements Maryland procurement law, regulations and policy as it applies to the Department of Health and Mental Hygiene (DHMH) and further establishes authority and delegation of authority within DHMH. It provides exemptions for certain DHMH units and certain types of agreements. It defines the duties of a Procurement Officer and the roles of the Office of Contract Policy, Management and Procurement (OCPMP), the Information Resources Management Administration (IRMA), the Office of the Attorney General and the Central Services Division. It assigns responsibility for the creation of bid boards. Lastly, it establishes the use of Contract Fulfillment Teams as the approved model of procuring goods and services within DHMH and assigns to OCPMP certain responsibilities for creating and sustaining procurement documents and knowledge bases within DHMH, submission of the Procurement Agency Activity Report (PAAR), maintenance of records and development and implementation of procurement training.

II. BACKGROUND

Legislation enacted during the 1980 session of the Maryland General Assembly established a new Article in the Annotated Code of Maryland entitled "Article 21 - Procurement". This was subsequently recodified in 1985 as Division II, State Finance and Procurement Article (General Procurement Law). The law vests overall power and authority over procurement matters with BPW, a body comprised of the Governor, the Comptroller and the Treasurer. It requires the BPW, the Departments of General Services (DGS), Transportation, Budget and Management (DBM), and the University of Maryland to promulgate State procurement regulations. It permits certain delegation of procurement and contracting authority. The Board also establishes policy by issuing Advisories.

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The State Procurement Regulations, Title 21 (COMAR 21) became effective July 1, 1981. COMAR 21 defines procurement methods and procedures, sets forth specific clauses and provisions that must be included in State solicitations and procurement contracts, outlines remedies and socioeconomic policies and stipulates requirements for advertising and reporting procurement activity. The regulations provide for a series of delegations of authority from the DBM and the DGS (Primary Procurement Agencies) to procuring agencies such as DHMH. The delegation of authority to the procuring agency is predicated on the agency following certain procedures. The procuring agency must adhere to certain reporting and contract review requirements.

This policy implements procurement law and regulations as they apply to DHMH and further establishes delegated authority within the Department. This policy supersedes interim procurement policy DHMH 5360 (Int.), which was effective January 4, 1982.

III. POLICY STATEMENTS**A. DEFINITIONS**

1. Except as noted below, the definitions of this policy are the same, and shall have the same meaning as the definitions cited in COMAR 21.01.02.
2. In this policy the word “**Department**” shall mean the Department of Health and Mental Hygiene (DHMH).
3. The designation “**Primary Procurement Agency**” shall refer to the Department of General Services (DGS), Transportation (MDOT), Budget and Management (DBM), or the University of Maryland (UM).
4. The acronym **MOU**, for **Memorandum Of Understanding**, as used in this policy and any associated procedures means an Intergovernmental Agreement (agreement between DHMH and an agency of a political subdivision of the State, a government, including the government of another state, the United States or of another country, an agency or a political subdivision of a government, or a bi-state, multi-state, bi-county or multi-county governmental agency) and/or an Interagency Agreement (agreement between DHMH and another agency of the Executive Branch of Maryland).
5. A **Contract Fulfillment Team (CFT)** is an assembly of people brought together to process or facilitate procurement by way of:
 - a. computer-based technology (e.g. e-mail or video-conferencing);
 - b. telephone conferencing; or,
 - c. in-person meeting.

B. AUTHORITY

1. Authority for this policy is derived from:
 - a. Maryland Annotated Code, State Finance and Procurement Article, Div II Titles 11-18.
<http://198.187.128.12/maryland/lpext.dll?f=templates&fn=fs-main.htm&2.0>

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- b. COMAR Title 21 State Procurement Regulations
http://www.dsd.state.md.us/comar/subtitle_chapters/21_chapters.htm
- c. Department of Budget and Management Directives
http://www.dbm.maryland.gov/dbm_publishing/public_content/dbm_taxonomy/procurement/doing_business_with_dbm/dbmdirectivesoverview.html
- d. Board of Public Works Advisories
http://www.bpw.state.md.us/bpw_ad.asp

2. Any authority to approve procurement contracts, (including Task Orders, or contracts of any type or allowable monetary value) delegated to DHHM by DBM and DGS as allowed in COMAR 21.02.03.02 and 21.02.05.03 and .04, shall be in writing, and is held by the Secretary of DHHM or designee. This includes authority to purchase commodities and execute maintenance contracts delegated by DGS to facilities that are part of DHHM and accountable to the Secretary of DHHM, including but not limited to all day and residential facilities, including hospitals and schools, owned and/or operated by the Department.

3. Any authority to approve contracts, MOUs or like business agreements between the DHHM and another State agency or a political subdivision of the State or other governments is held by the Secretary of DHHM or designee.

4. Any authority to approve procurement contracts (including Task Orders, or contracts of any type or allowable monetary value) delegated or deemed to be delegated to the Secretary of DHHM may be re-delegated.

5. Any authority to approve contracts, MOUs, or like business agreements held by the Secretary of DHHM may be delegated.

6. The Secretary of DHHM or designee is authorized to sign contracts, MOUs, or like business agreements in any amount, thus binding the Department to all specifications, terms, conditions and covenants contained or incorporated by reference in those agreements.

7. Any authority to sign contracts, MOUs or like business agreements held by the Secretary of DHHM may be delegated.

C. SCOPE**1. General**

Except as otherwise noted in this policy, this policy applies to:

- a. Expenditures by any DHHM unit under a procurement contract;
- b. All procurements by a DHHM unit on behalf of another DHHM unit, other State or governmental agency, or other entity; and
- c. All procurements by a unit, even if a resulting procurement contract will involve no expenditure by the State or will produce

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revenue for the State, for services that are to be provided for the benefit of State officials; State employees; students at a State facility, including a school, hospital, institution, or recreational facility; clients or patients at a State hospital or State institution; or the public at a State recreational facility; or the public at a State transportation facility or State higher education facility, as required by BPW.

2. Exemptions

- a. This policy does not apply to the following DHMH units:
 - 1) Maryland Health Care Commission
 - 2) Maryland Health Services Cost Review Commission
- b. A grant, as defined at COMAR 21.01.02.01(46), is not a contract and is not governed by this policy.
- c. Except for Intergovernmental/Interagency agreements [item (7)], all contracts and agreements identified at COMAR 21.01.03.01, [items (1) - (6) and (8) - (30)] are exempt from this policy.

D. DELEGATION**1. Approval Authority**

- a. The Director, Office of Contract Policy, Management and Procurement (OCPMP) is delegated by the Secretary, DHMH, to exercise the Secretary's authority to review and approve procurement contracts.
- b. The Director of OCPMP may further delegate this authority, given that:
 - 1) Approval authority may be delegated only to individuals, not to entities such as program units or facilities;
 - 2) Delegation of approval authority is based on determination of capacity to carry out the functions of procurement, based upon factors such as completion of training, testing, experience, and practical evidence of competence in all aspects of the process;
 - 3) Exercise of authority under any delegation will be monitored on an ongoing basis by OCPMP to assure continued adherence to the law, regulation and policy of the State and DHMH;
 - 4) Delegation of approval authority may be withdrawn by the Director of OCPMP when as a result of ongoing monitoring or other information, it is determined that the individual has not maintained his/her competency in procurement processing, or has otherwise failed to comply with

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applicable procurement law, regulation or policy.

c. Generally, delegation by the Director of OCPMP as set forth in Section III.D.1.b will be for Small Procurement Authority in the amount of \$25,000 or less or for MOUs up to \$200,000, but may, depending on the circumstances, be for any other amount up to the limit of authority delegated to DHHM by the Primary Procurement Agencies.

d. In the case of any delegated procurement authority the Director of OCPMP may retain in OCPMP or delegate to the individual certain designated processing authority.

2. Signatory Authority

a. The Secretary may delegate authority to sign contracts and MOUs with a value of \$200,000 or less to the Director, OCPMP by a Memorandum of Delegation.

b. The Secretary may delegate authority to sign contracts and MOUs with a value greater than \$200,000 to a Deputy Secretary or other senior management official by a Memorandum of Delegation.

c. The Director of OCPMP may re-delegate signatory authority for contracts or MOU's with a value of \$200,000 or less to the Director (CEO) of a facility or Administration, to the extent that individuals in the facility or Administration have been delegated and retain procurement approval authority as set forth in Section III.D.1.

3. Corporate Purchasing Card Use

Individuals, to whom Corporate Purchasing Cards are assigned, function as Procurement Officers within the limits of the authority granted to them by the Division of General Accounting and the authority delegated to them by the OCPMP. <http://indhmh/corppurch/index.html>

4. Emergency Procurement Authority

a. The Procurement Officer may award an emergency procurement contract with the approval of the Secretary as allowed under COMAR 21.05.06. Except as provided in Section III.D.4.b, this award and approval authority is not delegated.

b. All procurement approval, signatory, and procurement officer authority delegated or retained in accordance with this Section III.D of this Policy is subject to and may be superceded by the requirements of any plan adopted by the Secretary for response to any catastrophic health emergency as set forth in Maryland Annotated Code-Health General Article, §§18-901 - 18-908.

E. ROLES AND RESPONSIBILITIES

1. Roles

- a. The OCPMP shall act in an advisory capacity to all personnel in DHMH. The OCPMP shall give advice and aid to all personnel and conduct training sessions, as necessary, to explain the procurement process. <http://indhmmh/ocpmp/>
- b. The Information Resources Management Administration (IRMA) shall provide technical assistance to all personnel in the DHMH in regard to information resources related procurements and shall review and, based on technical advisability and functional feasibility, approve or disapprove proposed hardware or software procurements.
- c. The Director, OCPMP is designated as the Procurement Officer for DHMH.

2. Responsibilities

- a. All DHMH personnel shall comply fully with the intent and spirit of Division II of the Maryland Annotated Code - State Finance and Procurement Article, COMAR Title 21- State Procurement Regulations, and those regulations, advisories, directives and guidelines promulgated by those State Procurement Departments that have jurisdiction over DHMH. (No statement in this policy should be construed as granting an exemption or deviation from any of the requirements stated in the documents cited here.) All personnel of DHMH involved in the procurement process are expected to become knowledgeable about procurement regulations to carry out their duties according to law and regulation
- b. The OCPMP shall maintain the required central files for procurements approved by or through OCPMP, affix to approved contracts a control number as outlined in the ADPICS Coding Instructions Manual, and shall collect and forward the "Procurement Agency Activity Report " (PAAR) for DHMH. PAARs shall be submitted as directed in the agency plan approved by the DBM.
- c. The OCPMP, in its responsibility to maintain central procurement files, shall be the custodian of procurement records for purposes of information requests pursuant to the Maryland Public Information Act (PIA), Maryland Annotated Code, State Government Article §§10-611 - 10-628. DHMH program units shall be custodians of programmatic and substantive records generated under a procurement contract and shall be responsible for responding to PIA information requests for such records.
<http://www.oag.state.md.us/Opengov/pia.htm>
- d. The OCPMP shall establish procurement procedures for DHMH subject to all laws, regulations and procurement policy, including this policy. These procedures shall be made available to DHMH staff in a

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Resource Guide published on the DHMH Intranet.

e. The Director, OCPMP or designee and the Director (CEO) or Administrator (COO) or designee of each DHMH facility with delegated approval, signatory or procurement officer authority, pursuant to Section III.D of this policy, shall establish and maintain a "bid board", to provide public notice of invitations for bids (IFBs) on State contracts within their sphere of influence for which the bid amount is reasonably expected to be greater than \$10,000 but less than \$25,000.00. A "bid board" may either be physical or Internet based.

f. The Director, OCPMP or designee, and the Director (CEO) or Administrator (COO) or designee of each DHMH facility with delegated approval, signature or procurement officer authority pursuant to Section III.D of this policy, shall cause to be posted, solicitations where the amount is reasonably expected to be greater than \$10,000 but less than \$25,000, to the DHMH Internet site titled "Current Procurement Opportunities". <http://www.dhmh.state.md.us/procumnt/procopps.html>

g. Where the amount is reasonably expected to be greater than \$25,000, the Director, OCPMP or designee shall cause solicitations to be posted to the procurement portal *eMarylandMarketplace* as directed by DBM. <http://www.emarylandmarketplace.com/emm/index.cfm>

h. The OCPMP shall review and revise the standard procurement forms used by DHMH as necessary but no less than annually to ensure that all language, terms and conditions comply with Maryland law, regulation, and policy. The OCPMP shall further make these forms available to DHMH staff on the DHMH Intranet.

i. The OCPMP shall provide on-going procurement training for DHMH staff to ensure that those involved maintain an acceptable level of competence in all aspects of the procurement process.

j. The OCPMP shall remain cognizant of all additions, deletions and changes to procurement law, regulation and policy as promulgated by the Maryland General Assembly, BPW, DBM and DGS, and shall make such information known to DHMH personnel.

k. As required at COMAR 21.03.02, an Assistant Attorney General shall review all contracts exceeding an amount of \$25,000, for form and legal sufficiency. Standard form contracts, once approved for form and legal sufficiency by an Assistant Attorney General, need not be subsequently approved if there are no substantive modifications or alterations to the form when used by a procuring unit, provided, however, that the OCPMP shall, in collaboration with the office of the Attorney General, regularly review and monitor the content and use of any approved standard form.

F. PROCUREMENT OFFICER

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1. An individual must be authorized by DHMH, in accordance with this policy, to carry out the duties of a procurement officer. Such duties, as determined at COMAR 21.01.02.01 (67), are to formulate procurement contracts; to administer procurement contracts, and to make written determinations or findings with respect to procurement contracts.
2. Procurement officer authority includes authority to approve and sign procurement contracts only if this authority has otherwise been delegated pursuant to Section III.D.1 and D.2 of this Policy.

G. CENTRAL SERVICES DIVISION

The Central Services Division of the General Services Administration maintains and controls the inventory of all fixed assets, supplies, and real property, and manages the operation of the Central Warehouse, which includes shipping and receiving, the self-service store, and supply storage. <http://www.dhmh.state.md.us/gsa/html/csd.html>

H. LIMITATIONS

1. The Department's authority to approve items, or to delegate its approval authority to units within DHMH shall not exceed the authority delegated to it by DBM or DGS.
2. Any procurement authority not specifically delegated to DHMH by a Primary Procurement Agency is retained by that Primary Procurement Agency.
3. Any procurement authority delegated to DHMH not specifically delegated by OCPMP to a procuring unit is retained by OCPMP.

I. USE OF CONTRACT FULFILLMENT TEAMS

1. A Contract Fulfillment Team (CFT or Team) shall be used to accomplish the complete procurement process, including contract management, from inception to expiration.
2. A Team is comprised of core "Primary and Secondary" members which serve concurrently during the life of the contract. Usually arranged by the procuring unit in collaboration with the Office of Contract Policy, Management and Procurement (OCPMP), The CFT is made up of various stakeholders for a given need or activity.

IV. REFERENCES

- Maryland Code Annotated, State Finance and Procurement Article, Division II Titles 11 - 18. <http://198.187.128.12/maryland/lpext.dll?f=templates&fn=fs-main.htm&2.0>
- COMAR Title 21 State Procurement Regulations http://www.dsd.state.md.us/comar/subtitle_chapters/21_chapters.htm

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- Department of Budget and Management Directives
http://www.dbm.maryland.gov/dbm_publishing/public_content/dbm_taxonomy/procurement/doing_business_with_dbm/dbmdirectivesoverview.html
- Maryland Annotated Code-Health General Article, §§18-901 - 18-908.
http://mlis.state.md.us/cgi-win/web_statutes.exe?ghg&18-901
- Board of Public Works Advisories http://www.bpw.state.md.us/bpw_ad.asp
- Maryland Public Information Act Manual (PIA), Office of the Attorney General,
<http://www.oag.state.md.us/Opengov/pia.htm>
- e-Maryland Marketplace Bid Board
<http://www.emarylandmarketplace.com/emm/index.cfm>
- DHHM OCPMP Procurement Opportunities Bid Board
<http://www.dhmm.state.md.us/procumnt/procopps.html>
- DHHM OCPMP Standard Procurement Forms
http://www.dhmm.state.md.us/forms/sf_dcpf.htm

Approved:

/S/ Signature on File

Nelson Sabatini, Secretary, DHHM

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